

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>FIBERCOMM, L.C., FOREST CITY TELECOM, INC., HEART OF IOWA COMMUNICATIONS, INC., INDEPENDENT NETWORKS, L.C., AND LOST NATION-ELWOOD TELEPHONE COMPANY,</p> <p style="text-align:right">Complainants,</p> <p style="text-align:center">vs.</p> <p>AT&T COMMUNICATIONS OF THE MIDWEST, INC.,</p> <p style="text-align:right">Respondent.</p>	<p>DOCKET NO. FCU-00-3</p>
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**ORDER DENYING COMPLAINANTS'
MOTION FOR EXPANSION OF ORDER**

(Issued June 6, 2002)

BACKGROUND

On October 25, 2001, the Utilities Board (Board) issued its "Final Decision and Order" in this docket, finding (among other things) that AT&T Communications of the Midwest, Inc. (AT&T), constructively ordered access services from certain competitive local exchange carriers¹ (CLECs) and that AT&T owes those CLECs for the access services it ordered and used. The Board directed the CLECs to re-bill

¹ The Complaint was filed by FiberComm, L.C., Forest City Telecom, Inc., Heart of Iowa Communications, Inc., Independent Networks, L.C., and Lost Nation-Elwood Telephone Company (Complainants).

AT&T for past access services provided, at the access rates specified in the CLECs' then-effective access tariffs, through the date of the order. The Board also found the CLECs' then-existing access charges were unreasonable and ordered them to file new access tariffs with lower rates, eliminating the carrier common line charge (CCL) from their tariffed access charges. If, however, any of the Complainants believed higher access charges continue to be appropriate in their particular circumstances, they could file new proposed access tariffs with carrier-specific cost support.

The Complainants (and other parties) sought rehearing of the Board's order, and AT&T requested a stay of the final decision and order while the requests for rehearing were pending. The Board granted that request and stayed the effectiveness of its order while rehearing was pending. On January 25, 2002, the Board issued its order on rehearing, affirming the final decision and order and lifting the stay. In that order, the Board also waived 199 IAC 22.14(2)"d"(1), which specifies a carrier common line charge of three cents per minute.

On April 3, 2002, Complainants filed a motion for clarification of the Board's order, requesting a determination that they did not have to file new access tariffs until after judicial review of the Board's orders. In the alternative, Complainants requested a stay of the tariff-filing requirement in the Board's order, pending judicial review. The Board issued an order denying the request for stay on April 26, 2002, and ordered Complainants to file new access tariffs by June 10, 2002.

On May 8, 2002, Complainants filed a "Motion For Expansion Of Order," asking the Board to state that the compliance tariffs to be filed June 10, 2002, are to be effective from and after January 25, 2002, the date the Board waived its CCL rule,

rather than from and after October 25, 2002, the date the Board issued the final decision and order. Complainants cite no authority for their motion.

On May 14, 2002, AT&T filed a resistance to Complainants' motion. AT&T argues that Iowa Code §§ 476.11 and 476.3 (2001) grant the Board the statutory power and authority to order Complainants to file new tariffs omitting the CCL charge. AT&T argues the Board has this authority without reference to 199 IAC 22.14(2)"d"(1) and without having to formally waive that rule. The Board's subsequent order waiving the rule merely confirmed that the waiver standards are satisfied in this case, according to AT&T.

AT&T also argues that, assuming a waiver were required, the Complainants were not prejudiced in any way by the brief delay from October 25, 2001, to January 25, 2002, especially since the October 25, 2001, order was stayed during that period.

ANALYSIS

The Board will deny Complainants' motion for expansion. Iowa Code §§ 476.3 and 476.11 (2001) provide ample statutory authority for the Board's order of October 25th and no argument has been advanced that would support modification of that order.

In the October 25th order, the Board cited § 476.3 as one source of its authority in this docket, see pages 12-17 and page 32, Ordering Clause No. 2, of the October 25th order. That statute provides in relevant part as follows:

When the board, after a hearing held after reasonable notice, finds a public utility's rates, charges, schedules,

service, or regulations are unjust, unreasonable, discriminatory, or otherwise in violation of any provision of law, the board shall determine just, reasonable, and nondiscriminatory rates, charges, schedules, service, or regulations to be observed and enforced.

This language authorizes the Board to order retroactive relief in appropriate circumstances, Mid-Iowa Community Action Group, Inc., v. Iowa State Commerce Commission, 421 N.W.2d 899, 901 (Iowa 1988). Here, the Board did not order retroactive refunds of past charges; instead, the October 25th order was effective only on a prospective basis from the date of the order. Still, the fact that the statute gives the Board the authority to order retroactive relief cannot be reconciled with the Complainants' apparent belief that the Board had to waive a rule in order to exercise its statutory authority on a prospective basis.

The Board's October 25th order also cited § 476.11 as an alternative source of authority for requiring that the Complainants reduce their intrastate access charges on a prospective basis. (See pages 12-17.) Section 476.11 provides in relevant part as follows:

Whenever toll connection between the lines or facilities of two or more telephone companies has been made, or is demanded under the states of this state and the companies concerned cannot agree as to the terms and procedures under which toll communications shall be interchanged, the board upon complaint in writing, after hearing had upon reasonable notice, shall determine such terms and procedures.

The phrase "terms and procedures" as used in this statute includes financial matters such as rates. Northwestern Bell Tel. Co. v. Hawkeye State Tel. Co., 165 N.W.2d 771 (Iowa 1969). Thus, § 476.11 also authorizes the Board to order the

Complainants to reduce their intrastate access charges on a prospective basis, and perhaps on a retroactive basis as well.

The fact that the Board did not waive the rule in the October 25th order cannot limit the Board's exercise of its statutory authority. It was not necessary that the rule be waived on October 25, 2001; for example, that waiver, if required at all, could have been granted as a part of a subsequent Board order approving the Complainants' new tariffs. Complainants cite no authority in support of their apparent belief that the rule had to be waived as a part of the October 25, 2001, order, and the Board will not grant Complainants' motion to modify its final decision and order, by expansion or otherwise.

ORDERING CLAUSE

IT IS THEREFORE ORDERED:

The "Motion For Expansion Of Order" filed in this docket on May 8, 2002, by FiberComm, L.C., Forest City Telecom, Inc., Heart of Iowa Communications, Inc., Independent Networks, L.C., and Lost Nation-Elwood Telephone Company is denied.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 6th day of June, 2002.